

The 11th October, 1994

No. 14/13/87-6Lab/666.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s M. D. Sonapat Central Co-op. Bank, Ltd., Sonapat *versus* Purshotam Datt.

IN THE COURT OF SHRI P. L. KHANDUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ROHTAK

Reference No. 191 of 1993

between

SHRI PURSHOTAM DATT, S/O SHRI PUSKAR DATT, HOUSE NO. 6/806, MOHALLA BHATTAN, SONEPAT .. *Workman*

and

THE MANAGEMENT OF M/S M. D. SONEPAT CENTRAL CO-OPERATIVE BANK LTD., SONEPAT

Present :

None, for the parties.

AWARD

In exercise of powers conferred by sub-clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana has referred the following dispute, between the parties named above to this Court for adjudication,—*vide* Labour Department Endst. No. O.V./Sonapat/52-93/33233—38, dated 2nd September, 1993 :—

Whether the termination of services of Shri Purshotam Datt, is justified and in order ? If not, to what relief he is entitled ?

2. The case was called several times, but no one has appeared on behalf of the parties. Hence the reference is dismissed in default. The parties are left to bear their own costs.

P. L. KHANDUJA,,

The 9th September, 1994

Presiding Officer,
Industrial Tribunal/Labour Court,
Rohtak.

Endorsement No. 191—93/2321, dated the 15th September, 1994

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Department, Chandigarh.

P. L. KHANDUJA,
Presiding Officer,
Industrial Tribunal/Labour Court,
Rohtak.

No. 14/13/87-6Lab./667.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s The Sonapat Central Coop. Bank, Ltd., Sonapat, *versus* Rameshwar Dass.

IN THE COURT OF SHRI P.L. KHANDUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ROHTAK

Reference No. 387 of 1989.

between

SHRI RAMESHWAR DASS S/O SHRI HARNAM, C/O 2/216, CITU OFFICE, KATHMANDI, SONEPAT,

.. *Workman*

and

THE MANAGEMENT OF M/S THE SONEPAT CENTRAL CO-OPERATIVE BANK LTD., SONEPAT

.. *Management*

Present :

Shri S. S. Gupta, A. R., for the workman.

Shri M. C. Bhardwaj, A.R., for the management.

AWARD

In exercise of powers conferred by Sub-Clause (c) of Sub-Section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana has referred the following dispute, between the parties, named above, to this Court for adjudication,—*vide* Labour Department Endorsement No. SOV/Soni/68-89/33319—25, dated 7th August, 1989 :—

“Whether the termination of services of Shri Rameshwar Dass is justified and in order? If not, to what relief he is entitled?”

2. The workman and the management were summoned and the workman appeared and filed the claim statement that the petitioner had been in the service of the bank since March, 1976 as a Secretary. The work and the conduct of the petitioner remained satisfactory. As the material time the petition was drawing a salary of Rs. 1000/-. That all of a sudden the petitioner was served with a chargesheet in the year 1984 containing various charges of embezzlement. As the chargesheet was not detailed one and the evidence in support of the charges was not attached to the chargesheet, the petitioner filed a detailed reply of the chargesheet without going into the allegations made in the chargesheet and the detailed explanation, a domestic enquiry was ordered against the petitioner. The alleged domestic enquiry report is not a reasoned report and lacks application of mind of the Enquiry Officer; after going through the formalities of final show cause notice, service of the petitioner stands dismissed by the respondent,—*vide* order dated 15th May, 1985; that the alleged termination-order dated 15th May, 1985 is quite illegal, arbitrary, capricious, against the rules and regulations and the principles of natural justice; the alleged order dated 15th May, 1985 is highly severe and drastic and also an act of mis-appropriation punishment; after the termination of the services as the services were terminated by way of stigma the petitioner inspite of his best efforts could not find a job and remain in employment through out. Hence the reference was filed that the petitioner is liable to be reinstated with continuity of service and full back wages also with other attending benefits.

3. The written statement is filed by the management that the workman was guilty of misconducts for which a fair and proper enquiry was conducted. In case the enquiry, in any case, found not proper the management reserves its right to prove the misconduct; before this Court. The workman had embezzled Rs. 9180-80 paise while posted at Kharkhoda Coop. Credit & Service Society. He was chargesheeted and a police case F.I.R. No. 182/87, dated 18th November, 1987 under Section 409/420 I.P.C. is pending against him. He embezzled Rs. 12194.26 paise out of the funds of the Rai Coop. Credit & Service Society against him. It is admitted that the workman is appointed in March, 1976, it is however, wrong that his work remained satisfactory. The workman was served three chargesheets (i) No. 1081-82 dated 13th July, 1982, (ii) No. 25075-77, dated 24th April, 1984 and (iii) No. 27344-45, dated 21st May, 1984. He submitted his explanation and a regular domestic enquiry was held in respect of charge sheet dated 13th July, 1982. A fair and proper domestic enquiry was held against the workman on the principles of natural justice. The enquiry report is based on evidence and is quite lawful. It is further added that the workman made deposit part of embezzlement amount mentioned in the chargesheet. The workman was issued final show cause and personal hearing by the punishing authority before termination of his services. The termination order is quite lawful, legal and as per provisions of rules and principles of natural justice. The workman availed the provisions of appeals which were dismissed. Hence the reference be answered in favour of the management.

4. Replication was filed by the workman, on the pleadings of the parties, the following issues are frame :—

1. As per terms of reference?
2. Whether a fair and proper domestic enquiry was conducted by the management.
3. Relief.

Issue No. 2 :

5. This issue was treated as preliminary issue but Shri M. C. Bhardwaj made statement that the issue regarding enquiry may be decided against the management and that management may be allowed to lead evidence on merits to prove the charges against the workman. The statement of M. C. Bhardwaj recorded on 31st October, 1990. In view of the statement preliminary issue is decided against the management.

6. My findings on the remaining issues with reasons thereof are as under :—

Issue No. 1 :

7. The management has examined Shri Ram Dass, D.O. Coop. Bank, Hisar as MW-1 and closed the evidence on behalf of the management on preliminary issues. The statement of Shri S. S. Gupta is recorded to the effect that he did not want to lead any evidence on the issue of enquiry. After that the management has

examined Partap Singh as MW-2, MW-3 is Shri Randhir Singh, Secretary and Shri Tek Chand Junior Accountant as MW-4. The workman has come into witness box as WW-1 and the evidence of the workman was closed by Court Order.

8. The learned A.R. for the management made these submission that when the workman/applicant is proved to be involved in the embezzlement cases there is need of holding enquiry as proved from Ex. MW-1/1/2, Ex. MW-3/4 and Ex. MW-4/4 and the reply filed by the applicant admitting the charge of chargesheet the copies of which are Ex. MW-4/2 and Ex. MW-4/3 and Ex. MW-4/4. The workman had admitted the charges number 1, 3 and 4. Ex. MW-4/6 the reply has been given by the workman admitting the charges made against him. The applicant had deposited the embezzled amount and he admitted the charges No. 1 and 3 given in chargesheet Ex. MW-4/4 and admitted all the charges given in the chargesheet Ex. MW-4/6. For the submission he place reliance Dattatray Trimbak Kulkarni Versus State Bank of India, Bombay & others, cited in 1993 (1) I.L.L.J. 547 holding that the fact of reimbursement cannot oust the right of the bank to hold an enquiry. Probably because of reimbursement the bank did not prosecute the petitioner in a Criminal Court. The order of dismissal clearly sets out that the past record of the petitioner was not without blemish. The disciplinary authority did not find any past blemish against the Branch Manager. The petitioner had called writ petition in the High Court at Bombay the cited authority the petitioner did not dispute that on checking it was found that an amount of Rs. 10500/- was missing from the cash available with the branch. The petitioner could not explain how the amount was found missing but merely suggested that the lock might have been broke because there was no enough security. The Enquiry Officer submitted his report holding that all the three charge were duly proved. The disciplinary authority thereupon accepted the findings of the Enquiry Officer and passed order. It is further held that the petitioner submitted that though it is undoubtedly true that the cash of Rs. 10500/- was found missing from the Talasari Branch, the petitioner could not be held responsible for the said loss. It is further held that as soon as the cash was found missing, the petitioner reimbursed to the Bank the amount found missing and the petitioner did this on assurance that no action will be taken. From the going through the whole authority I am of the view that the nothing is laid down if the enquiry is held to be validity made for result of delinquent employee. It is generally held that since the employee had deposited the amount the Court can held him guilty on the charges and had taken inpuigned action against employee. The learned A.R. for the management also made the submission that as the act of embezzlement is proved from the factum that the applicant had admitted the charges made against him and whether the enquiry was held properly against him or not. It is proved and thus there is no hitch to conclusion that the applicant had embezzled the amount. When the embezzlement is proved there is no question of taking lenient view for the said contention. The reference was made to State of Punjab through General Manager, Punjab Roadways, Batala versus Shri Harish Chander, Ex-Conductor and Anr. cited in 1993(3) R.S.J. 477 and 1985 Lab. I.C. in case The State of Punjab and another versus Surat Singh and another on this point.

9. However, the learned A.R. for the workman made submission that disciplinary action should be taken against the workman the workman had deposited the whole amount with the management whether any amount embezzled by him or not and this Court is fully competent to give the reduction in the punishment for the relief the Reliance was placed on Ram Lubhaya versus Municipal Corporation, cited in 1994(3) RSJ, 524.

10. From the authorities referred by the parties and the arguments of both the parties, I am of the view as the workman was found guilty on three occasions for embezzlement. No lenient view could be taken against the workman. Hence I decide this issue against the workman.

Issue No. 3 (Relief) :

11. In view of my findings on the above issues I hold that the workman is not entitled to any relief. Hence I dismiss the reference petition. The parties are left to bear their own costs. The reference is answered and returned accordingly.

The 9th September, 1994.

P. L. KHANDUJA,
Presiding Officer,
Industrial Tribunal/Labour Court,
Rohtak.

Endorsement No. Ref. 387/89/2320, dated 15th September, 1994.

Forwarded (four copies), to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh.

P. L. KHANDUJA,
Presiding Officer,
Industrial Tribunal/Labour Court,
Rohtak.